

SB Bill #518 (Wieckowski)

Exempting CPRA Cases from 998 Offers

BACKGROUND

The California Public Records Act (CPRA), enacted in 1968, ensured the fundamental right of every Californian to inspect any public record during a state or local agency's office hours. If an agency receives a request to inspect an identifiable and disclosable record, the agency must promptly make the record available. If an agency improperly withholds records, a member of the public may seek a court order to enforce the right to inspect or copy the records sought.

The CPRA mandates that a court award costs and reasonable attorney fees to the requester should the requestor prevail in litigation, meaning the defendant agency releases a copy of a previously withheld document. A court may only award court costs and reasonable attorney fees to the public agency if the court finds that the requestor's case is clearly frivolous.

PROBLEM

Although the CPRA mandates that a court awards costs and reasonable attorney fees to requestors should they prevail, an offer known as a "998 offer", which derives its name from the code section it is found in, undermines the CPRA by allowing the government to shift costs onto requestors and prevent public records from being released.

The purpose of a §998 offer is to encourage settlement by providing a strong financial disincentive to a party, whether it be a plaintiff or defendant, who fails to achieve a better result than that party could have achieved by accepting the opponent's settlement offer. For example, if a defendant makes a §998 offer that is rejected and the plaintiff fails to obtain a judgment that is more favorable than the offer amount, then the plaintiff is not entitled to post-offer costs and must pay the defendant's post-offer costs.

§998 offers are an important tool in getting parties to settle in certain cases, however they do not work in CPRA cases. Take *Dunes Development v. California Coastal Commission* as an example: Dunes Development requested public documents from the

California Coastal Commission which the agency refused to release. Dunes Development took the Commission to court to retrieve the requested documents. The Coastal Commission made a §998 offer of \$10,000, along with a proposal that it release some of the documents requested. Dunes Development rejected the offer and the Coastal Commission offered a second §998, which again proposed release of only some of the documents requested and \$30,000. Dunes Development refused again.

§998 offers were never intended to be used by the government to prevent disclosable documents from being withheld to the public.

EXISTING LAW

The California Public Records Act states that "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

THIS BILL

SB 518 prevents §998 offers from being used in CPRA cases. This bill ultimately makes sure that the CPRA is being used as it was intended: as a way for the public to get information from their government without fear of being burdened by court fees if the public agency refuses to release documents.

SUPPORT

None on file